

The background of the certificate features a stylized map of Alameda County, California, rendered in various colors including purple, red, yellow, green, and blue. Overlaid on this map are several hands of different colors (purple, red, blue, green, yellow) reaching out and holding the map together, symbolizing community and support.

# OUTSTANDING DEDICATION AWARD

On behalf of the Alameda County Tobacco Control Coalition,  
this award acknowledges that the

## **ALBANY CITY COUNCIL**

has been recognized for outstanding achievements in tobacco control  
as a dedicated advocate in Alameda County.

June 21, 2019

Beatrice Cardenas-Duncan

Beatrice Cardenas-Duncan, Co-Chair  
Alameda County Tobacco Control  
Coalition

Rosalyn Moya

Rosalyn Moya, Co-Chair  
Alameda County Tobacco Control  
Coalition

**ANDREW J. DHUEY**  
**ATTORNEY AT LAW**  
**456 BOYNTON AVENUE**  
**BERKELEY, CA 94707**

(510) 528-8200

ajdhuey@comcast.net

20 June 2019

**FILED VIA ECF SYSTEM**

Office of the Clerk  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: *Lions Club of Albany, California v. City of Albany*  
Case no. 18-17046  
Citation of supplemental authority, Federal Rule of Appellate Procedure 28(j)

Dear Clerk of the Court:

I represent Defendant and Counterclaimant/Appellant Rochelle Nason in the above-captioned action. With respect, I direct this Court's attention to the U.S. Supreme Court's decision issued this morning in *American Legion v. American Humanist Ass.* (Slip Op. attached). Defendants/Counterclaimants mentioned the pendency of this case on pages 1-2 of their reply brief.

The Bladensburg Cross display in *American Legion* withstood scrutiny under the Establishment Clause because it "carries special significance in commemorating World War I." Slip Op. 28. The Supreme Court reasoned that although the "cross is undoubtedly a Christian symbol, . . . that fact should not blind us to everything else that the Bladensburg Cross has come to represent." *Id.* at 31.

In sharp contrast, the Latin cross at issue in the instant case ("Cross") has "never been a war memorial," does not have any "historical relevance" and serves no "secular purpose." See E.R. 14, 16; City Br. 12-13. The parties in this case agree that the Cross is solely a Christian religious symbol and that the Cross-related activities of Plaintiff and Counterclaim-defendant/Appellee Lions Club of Albany ("LC") on the City of Albany's land are solely for religious purposes. See City Br. 11-13; LC Br. 15-17. Moreover, LC does not challenge the district court's conclusion that the Cross display is an Establishment Clause violation because "the primary effect of the continued presence of the Albany Hill cross advances religion." E.R. 13; LC Br. 10, 13.

CLERK OF THE COURT

PAGE 2

20 JUNE 2019

Furthermore, *American Legion* is an Establishment Clause case that involved no state constitutional provisions. Here, the City and Mayor Nason ground their constitutional points on that federal constitutional provision, but also on the No Aid and No Preference Clauses of the California Constitution. *See* City Br. 24-27. Under controlling Ninth Circuit authority, these state constitutional issues should be addressed first, and their resolution might render consideration of the federal constitutional issue unnecessary. *See, e.g., Hewitt v. Joyner*, 940 F.2d 1561, 1565 (9th Cir. 1991).

In sum, although *American Legion* concerned the constitutionality of a large, stand-alone Latin cross display on public land, it is both factually and legally distinguishable from the instant case.

Respectfully submitted,

s/ Andrew J. Dhuey

*Attachment (Slip Op. in American Legion)*

cc: all counsel, per ECF service

*The Law Offices of*  
**ROBERT E. NICHOLS**

---

June 24, 2019

**FILED VIA ECF SYSTEM**

Office of the Clerk  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

RE: *Lions Club of Albany, California v. City of Albany*  
Case no. 18-17046  
Citation of supplemental authority, Federal Rule of Appellate Procedure 28(j)

Dear Clerk of the Court:

I represent Counter-Defendant / Appellee, The Lions Club of Albany, California, in the above captioned action. The U.S. Supreme Court's decision issued June 20, 2019, in *American Legion v. American Humanist Ass.* is relevant to the present case under appeal.

The Albany Hill Cross, which is the subject of this litigation, was lawfully constructed on private property with consent of the property owner at the Lions' expense in 1971. In 1973, as part of a multi-party real estate development, the Lions were given an easement to access and maintain the Cross. The City was subsequently given and accepted the property subject to the Lions' easement. The City took no action and made no objection to the Cross until almost fifty (50) years later. Over this time the Cross has become an embedded feature of the Albany community landscape and is valued by many in the community. Pursuant to *American Legion* the longstanding presence of the Cross creates a presumption of constitutionality which Nason and the City have not overcome.

*American Legion* also brings into question the propriety of Nason's non-statutory nuisance claim. Nason has no interest and has suffered no loss sufficient to establish standing to object to the Cross. Justice Gorsuch addresses the demise of the *Lemon* Test and with it the need for Article III standing by a plaintiff in his concurring opinion. In this case the alleged nuisance is nothing more than Nason's "I-take-offense" claim.

---

3060 El Cerrito Plaza, Suite 316, El Cerrito, California 94530

Telephone: (510) 423-3280

e-Mail [renichols01@comcast.net](mailto:renichols01@comcast.net)

In summary, the City and Nason have failed to overcome the presumption of constitutionality both as to the location of the cross and the validity of the easement. Nason also lacks standing to assert her personal dislike of the Cross.

Respectfully submitted,

S/ Robert E. Nichols

cc: all counsel, per ECF service